U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20274552

Date: FEB. 10, 2022

Motion on Administrative Appeals Office Decision

Form I-918, Petition for U Nonimmigrant Status

The Petitioner seeks "U-1" nonimmigrant classification as a victim of qualifying criminal activity at sections 101(a)(15)(U) and 214(p) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1101(a)(15)(U) and 1184(p). The Director of the Vermont Service Center denied the Petitioner's Form I-918, Petition for U Nonimmigrant Status (U petition), concluding that she was not the victim of a qualifying crime as defined in section 101(a)(15)(U)(i) of the Act. The Petitioner then appealed this decision to us, and we subsequently dismissed it. We also denied a combined motion to reopen and reconsider. The Petitioner now files a second combined motion to reopen and reconsider our decision and submits a brief and previously submitted evidence. Upon review, we will dismiss the combined motion to reopen and to reconsider.

I. LAW

A motion to reopen must state new facts and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration; be supported by any pertinent precedent decision to establish that the decision was based on an incorrect application of law or policy; and establish that the decision was incorrect based on the evidence in the record at the time of the decision. 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and shows proper cause for reopening the proceeding or reconsideration of the prior decision. 8 C.F.R. § 103.5(a)(1).

To establish eligibility for U-1 nonimmigrant classification, petitioners must show that they: have suffered substantial physical or mental abuse as a result of having been the victim of qualifying criminal activity; possess information concerning the qualifying criminal activity; and have been helpful, are being helpful, or are likely to be helpful to law enforcement authorities investigating or prosecuting the qualifying criminal activity. Section 101(a)(15)(U)(i) of the Act.

A "victim of qualifying criminal activity" is defined as an individual who has "suffered direct and proximate harm as a result of the commission of qualifying criminal activity." 8 C.F.R. § 214.14(a)(14). "Qualifying criminal activity" is "that involving one or more of" the 28 types of crimes listed at section 101(a)(15)(U)(iii) of the Act or "any similar activity in violation of Federal, State, or local criminal law." Section 101(a)(15)(U)(iii) of the Act; 8 C.F.R. § 214.14(a)(9). The term "'any

similar activity' refers to criminal offenses in which the nature and elements of the offenses are substantially similar to the statutorily enumerated list of criminal activities" at section 101(a)(15)(U)(iii) of the Act. 8 C.F.R. § 214.14(a)(9).

Petitioners bear the burden of proof of demonstrating eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4); *Matter of Chawathe*, 25 I&N Dec. 369,375 (AAO 2010). As required initial evidence, petitioners must submit a Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B), from a law enforcement official certifying the petitioners' helpfulness in the investigation or prosecution of the qualifying criminal activity perpetrated against them. Section 214(p)(1) of the Act; 8 C.F.R. § 214.14(c)(2)(i). U.S. Citizenship and Immigration Services (USCIS) has sole jurisdiction over U petitions. 8 C.F.R. § 214.14(c)(4). Although petitioners may submit any relevant, credible evidence for the agency to consider, USCIS determines, in its sole discretion, the credibility of and weight given to all the evidence, including the Supplement B. Section 214(p)(4) of the Act; 8 C.F.R. § 214.14(c)(4).

II. ANALYSIS

According to the Supplement B submitted with the Petitioner's U petition, in [redacted] 2013, the Petitioner was the victim of robbery. The certifying agency listed grand larceny in the fourth degree, robbery in the second degree, and criminal possession of stolen property in the fifth degree under sections 155.30(5), 160.10(1), and 160.40 of the New York Penal Law (N.Y. Penal Law), respectively, as the statutes investigated or prosecuted. In the Director's decision and our preceding decisions, all incorporated here by reference, it was determined that although the record reflects that the crime of robbery in the second degree and grand larceny in the fourth degree was detected, investigated or prosecuted as being perpetrated against the Petitioner, she had not established that they were qualifying crimes or substantially similar to a qualifying crime. Therefore, her appeal and subsequent motions were dismissed.

On the current motions, the Petitioner continues to make the argument that we erred in determining that she was not a victim of a qualifying crime. Specifically, she again asserts that the statute of robbery in the second degree, under section 160.10(1) of the N.Y. Penal Law is a qualifying crime that is substantially similar to felonious assault. She submits a brief and previously submitted documents, however, does not submit new documents. Because a motion to reopen must state new facts and be supported by affidavits or other documentary evidence, we will dismiss the motion to reopen. *See* 8 C.F.R. § 103.5(a)(2).

Upon *de novo* review, we conclude that the arguments now presented on motion have been addressed in the Director's decisions and in our prior decisions. Therefore, we adopt and affirm the Director's decisions as well as our previous decisions with the additional comment below. *See Matter of P. Singh, Attorney*, 26 I&N Dec. 623 (BIA 2015) (citing *Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Chen v. INS*, 87 F.3d 5, 7-8 (1st Cir. 1996) ("[I]f a reviewing tribunal decides that the facts and evaluative judgments rescinding from them have been adequately confronted and correctly resolved by a trial judge or hearing officer, then the tribunal is free simply to adopt those findings" provided the tribunal's order reflects individualized attention to the case).

We will however address the Petitioner's argument that we erred in deciding not to look to other states' laws in our analysis who define aggravated or felonious assault as assaults with intent to commit robbery or intent to commit a felony. The Petitioner contends that since 8 C.F.R. 214.14(a)(9) states that "qualifying crime or any similar activities includes one or more of the following or any similar activities in violation of Federal, State, or local criminal law of the United States," any state or local criminal law is relevant in determining whether a crime qualifies as criminal activity.

Contrary to the Petitioners assertions, the certifying law enforcement agency must have responsibility for and legal jurisdiction over the investigation or prosecution of the qualifying criminal activity of which a petitioner is a victim. The U nonimmigrant classification was created, in relevant part, to "strengthen the ability of law enforcement agencies to detect, investigate, and prosecute" the crimes described in section 101(a)(15)(U)(iii) of the Act, "facilitate the reporting of crimes to law enforcement officials[,]" and "prosecute crimes committed against" immigrant crime victims. *See* Victims of Trafficking and Violence Protection Act (VTVPA) of 2000, div. B, Violence Against Women Act of 2000, tit. V, Battered Immigrant Women Protection Act of 2000, Pub. L. 106-386, sec. 1513(a)(2), 114 Stat. 1464, 1533-37. In line with this Congressional intent, the Act requires, in order to establish eligibility for U nonimmigrant classification, that petitioners have been helpful, are being helpful, or are likely be helpful to law enforcement authorities in the investigation or prosecution of the qualifying criminal activity . . . in violation of Federal, State, or local criminal law . . . ." Sections 101(a)(15)(U)(i)(III) and 214(p)(1) of the Act. The implementing regulations similarly reiterate that U petitioners must demonstrate their helpfulness to a certifying agency in "the investigation or prosecution of the qualifying criminal activity upon which [their] petition is based" and clarify that the term "certifying agency" is limited to "Federal, State, or local law enforcement agenc[ies], prosecutor[s], judge[s], or other authorit[ies] that ha[ve] responsibility for the investigation or prosecution of" the relevant offense. 8 C.F.R. §§ 214.14(a)(2), (b)(3), (c)(2)(i). Consequently, the Petitioner cannot establish eligibility based on the similarity of certified offenses to qualifying criminal activities in other jurisdictions where the certifying agency lacks the authority to investigate or prosecute, and the Petitioner's argument to the contrary is unavailing.

III. CONCLUSION

The Petitioner did not submit new evidence on motion. Therefore, she has not met the requirements for a motion to reopen. Furthermore, the Petitioner has not shown that our decision was based on an incorrect application of law or policy and accordingly has not met the requirements for a motion to reconsider.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.